

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

TWIN SECURITIES, INC., *et al.*,

Plaintiffs,

v.

AMERICAN REALTY CAPITAL
PROPERTIES, INC., *et al.*,

Defendants.

Civil Action No.: 1:15-cv-01291-AKH

HG VORA SPECIAL OPPORTUNITIES
MASTER FUND, LTD.,

Plaintiff,

v.

AMERICAN REALTY CAPITAL
PROPERTIES, INC., *et al.*,

Defendants.

Civil Action No.: 1:15-cv-04107-AKH

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**NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE UNDER SEAL
AMERICAN REALTY CAPITAL PROPERTIES, INC.'S OPPOSITION TO
DIRECT ACTION PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
AND SUPPORTING MATERIALS**

BLACKROCK ACS US EQUITY TRACKER
FUND, *et al.*,

Plaintiffs,

v.

AMERICAN REALTY CAPITAL
PROPERTIES, INC., *et al.*,

Defendants.

Civil Action No.: 1:15-cv-08464-AKH

PIMCO FUNDS: PIMCO DIVERSIFIED
INCOME FUND, *et al.*,

Plaintiffs,

v.

AMERICAN REALTY CAPITAL
PROPERTIES, INC., *et al.*,

Defendants.

Civil Action No.: 1:15-cv-08466-AKH

CLEARLINE CAPITAL PARTNERS LP, *et al.*,

Plaintiffs,

v.

AMERICAN REALTY CAPITAL
PROPERTIES, INC., *et al.*,

Defendants.

Civil Action No.: 1:15-cv-08467-AKH

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PENTWATER EQUITY OPPORTUNITIES
MASTER FUND LTD., *et al.*,

Plaintiffs,

v.

AMERICAN REALTY CAPITAL
PROPERTIES, INC., *et al.*,

Defendants.

Civil Action No.: 1:15-cv-08510-AKH

ETON PARK FUND, L.P. and ETON PARK
MASTER FUND, LTD.,

Plaintiffs,

v.

AMERICAN REALTY CAPITAL
PROPERTIES, INC., *et al.*,

Defendants.

Civil Action No.: 1:16-cv-09393-AKH

RELIANCE STANDARD LIFE INSURANCE
COMPANY, *et al.*,

Plaintiffs,

v.

AMERICAN REALTY CAPITAL
PROPERTIES, INC., *et al.*,

Defendants.

Civil Action No.: 1:17-cv-02796-AKH

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JET CAPITAL MASTER FUND, L.P., *et al.*,

Plaintiffs,

v.

AMERICAN REALTY CAPITAL
PROPERTIES, INC., *et al.*,

Defendants.

Civil Action No.: 1:15-cv-00307-AKH

ARCHER CAPITAL MASTER FUND, L.P., *et al.*,

Plaintiffs,

v.

AMERICAN REALTY CAPITAL
PROPERTIES, INC., *et al.*,

Defendants.

Civil Action No.: 1:16-cv-05471-AKH

ATLAS MASTER FUND, LTD., *et al.*,

Plaintiffs,

v.

AMERICAN REALTY CAPITAL
PROPERTIES, INC., *et al.*,

Defendants.

Civil Action No.: 1:16-cv-05475-AKH

FIR TREE CAPITAL OPPORTUNITY
MASTER FUND, L.P., *et al.*,

Plaintiffs,

v.

AMERICAN REALTY CAPITAL
PROPERTIES, INC., *et al.*,

Defendants.

Civil Action No.: 1:17-cv-04975-AKH

PLEASE TAKE NOTICE that Defendant American Realty Capital Properties, Inc. (“ARCP”), by its undersigned attorneys, files this Motion for Leave to File Under Seal ARCP’s Opposition to Direct Action Plaintiffs’ Motion for Partial Summary Judgment and Supporting Materials (the “Motion”). ARCP is filing the Motion because its Opposition to Direct Action Plaintiffs’ Motion for Partial Summary Judgment (the “Opposition”) and its supporting materials include references to, and attach as exhibits, documents designated as Confidential by various parties in the above-captioned actions (the “Confidential Documents”) pursuant to the Joint Stipulation and Protective Order entered by the Court. *See, e.g., Twin Securities, Inc. et al. v. Am. Realty Capital Props., Inc. et al*, No. 1:15-cv-01291-AKH, Dkt. No. 120 (Nov. 15, 2016) (“Protective Order”). Moreover, the Opposition and supporting materials include references to, and quotations from, deposition transcripts which are still subject to the 30-day presumption of confidentiality afforded by Paragraph 3(c)(iii) of the Protective Order, and which may themselves reference documents designated as Confidential by the parties in the above-captioned actions (the “Deposition Transcripts”). Accordingly, pursuant to Paragraph 5(a) of the Protective Order and in accordance with Rule 4 of this Court’s Individual Rules, ARCP is contemporaneously herewith (i) filing on ECF redacted copies of the Opposition and supporting materials, including fully redacted copies of excerpts of Deposition Transcripts, (ii) submitting unredacted copies of the same to the Court, and (iii) serving upon the other parties in the above-captioned actions unredacted copies of the same.

In accordance with Paragraph 5(b) of the Protective Order, ARCP states that the “Confidential” designation applied to Confidential Documents was made by other parties in the above-captioned actions. Specifically, the following documents referenced by ARCP in support of the Opposition were designated as Confidential by Defendant Grant Thornton LLP:

1. a document produced by Grant Thornton in the above-captioned action through its Voyager database, and introduced at Jessica Estrada's deposition as exhibit 303 (attached as Exhibit LL to the Declaration of Jonathan Ohring filed contemporaneously herewith ("Ohring Declaration"));
2. a document produced by Grant Thornton in the above-captioned action through its Voyager database, and introduced at Jessica Estrada's deposition as exhibit 313 (attached as Exhibit TT to the Ohring Declaration);
3. a document bearing the Bates numbers GT-ARCP DOC_00049775-GT-ARCP DOC_00049776 (attached as Exhibit SS to the Ohring Declaration);
4. a document bearing the Bates numbers GT-ARCP DOC_01783193-GT-ARCP DOC_01783201 (attached as Exhibit Z to the Ohring Declaration);
5. a document bearing the Bates numbers GT-ARCP DOC_00644868-GT-ARCP DOC_00644919 (attached as Exhibit KK to the Ohring Declaration);
6. a document bearing the Bates numbers GT-ARCP DOC_01293094-GT-ARCP DOC_01293160 (attached as Exhibit II to the Ohring Declaration);
7. a document bearing the Bates numbers GT-ARCP DOC_00746891-GT-ARCP DOC_00746896, and introduced at Jessica Estrada's deposition as exhibit 308 (attached as Exhibit QQ to the Ohring Declaration);
8. a document bearing the Bates number GT-ARCP DOC_01729354, and introduced at Jessica Estrada's deposition as exhibit 323 (attached as Exhibit DDD to the Ohring Declaration); and
9. the transcript of the deposition of Michael Pramberger, testifying in the above-captioned matter on January 24-26, 2018 (attached as Exhibit K to the Ohring Declaration).

Further, the following Deposition Transcripts referenced by ARCP in support of the Opposition are deemed to be Confidential pursuant to the 30-day presumption of confidentiality afforded by Paragraph 3(c)(iii) of the Protective Order:

1. the transcript of the deposition of Jessica Estrada, testifying in the above-captioned matter on April 4-6, 2018 (attached as Exhibit M to the Ohring Declaration);
2. the transcript of the deposition of Edward Rendell, testifying in the above-captioned matter on April 12-13, 2018 (attached as Exhibit N to the Ohring Declaration);
3. the transcript of the deposition of Michael Reiter, testifying in the above-captioned matter on April 24-25, 2018 (attached as Exhibit O to the Ohring Declaration);

4. the rough transcript of the deposition of Richard Fitzgerald, testifying in the above-captioned matter on May 2, 2018 (attached as Exhibit P to the Ohring Declaration); and
5. the rough transcript of the deposition of William Gribbin, testifying in the above-captioned matter on May 7-9, 2018 (attached as Exhibit OO to the Ohring Declaration).

ARCP takes no position with respect to whether sealing is appropriate. Because ARCP takes no position with respect to whether sealing is appropriate, and has no knowledge as to what portions of these documents the Designating Party, as defined in the Protective Order, determined were Confidential, ARCP has redacted all material in each Confidential Document other than identifying markings.

DATED: May 11, 2018
New York, New York

MILBANK, TWEED, HADLEY & McCLOY LLP

By: /s/ Jonathan Ohring
Scott A. Edelman
Antonia M. Apps
Jed M. Schwartz
Jonathan Ohring
28 Liberty Street
New York, New York 10005
Telephone: (212) 530-5000

Jerry L. Marks
2029 Century Park East, 33rd Floor
Los Angeles, California 90067-3019
Telephone: (424) 386-4000

*Attorneys for Defendant American Realty Capital
Properties, Inc. (n/k/a VEREIT, Inc.)*